

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BEAMAN KOLB,

Plaintiff,

v.
LEWIS COUNTY COMMUNITY HEALTH SERVICES, a not for profit Washington Corporation, D/B/A VALLEY VIEW HEALTH CENTER CENTRALIA WALK-IN CLINIC; WILLIAM MILLAR, P.A., and JANE DOE MILLAR, husband and wife; and Healthcare Providers JANE and JOHN DOES 1-10; and THE UNITED STATES OF AMERICA,

Defendants.

CASE NO. 3:15-cv-05640-RJB

ORDER GRANTING MOTION TO
DISMISS AND DENYING MOTION TO
STAY DISCOVERY PENDING
RESOLUTION OF MOTION TO
DISMISS

This matter comes before on a Motion to Dismiss and related Motion to Stay Discovery

Pending Resolution of the Motion to Dismiss filed by Defendant United States of America. Dkt. 7; Dkt. 9. Defendant United States of America has substituted itself for Lewis County Community Health Services and William Millar, the only two defendants named in the Complaint (except for Jane and John Does, who were not served). Dkt. 6. *See* Dkt. 1-2, at 4. Plaintiff did not respond to the motion. The Court has reviewed Defendant's motion and the remainder of the file herein.

1 Plaintiff filed a Complaint for Medical Negligence in Lewis County Superior Court on or
2 about March 11, 2015. Dkt. 1-2. The Complaint was later removed to this Court by Defendant on
3 September 2, 2015. Dkt. 1.

4 According to Plaintiff, the United States Department of Health and Human Services
5 (“DHHS”) maintains a computerized database that records all administrative tort claims filed with
6 DHHS that are eligible for Federal Tort Claims Act (“FTCA”) malpractice claim coverage. Dkt. 7, at
7 2. The DHHS database includes claims filed against Lewis County Community Health Services or
8 its employees. *Id.* Furthermore, according to Plaintiff, there is no record of any administrative tort
9 claim filed by Plaintiff in relation to Lewis County Community Health Services. *Id.* See Dkt. 8-2, at
10 2, 3. Plaintiff did not respond to Defendant’s representations about DHHS’ administrative record—
11 or lack thereof—which Defendant has substantiated through sworn declarations. *Id.*

12 All actions against the United States for damages resulting from government negligence must
13 be brought under the FTCA, 28 U.S.C. §§ 2671-2680, which requires exhaustion of administrative
14 remedies prior to filing. § 2675(a). The FTCA requires that to institute a claim against the United
15 States for negligence “the claimant shall have first presented the claim to the appropriate Federal
16 agency and his claim shall have been finally denied by the agency in writing and sent by certified or
17 registered mail.” *Id.* If a Federal agency ignores a claim for at least six months, that is also
18 considered a denial of a claim. *Id.*

19 In this case, Defendant represents that there is no record of any administrative claim. Dkt. 7,
20 at 3; Dkt. 8-3, at 2, 3. Plaintiff does not allege that he ever filed an administrative claim. See Dkt. 1-
21 2. Therefore, on the basis that Plaintiff fails to allege that he exhausted his administrative remedies,
22 Plaintiff has failed to state a claim for negligence. Fed. R. Civ. P. 12(b)(6). See § 2675(a).
23 Defendant’s motion should be granted.

* * *

Defendant's Motion to Dismiss (Dkt. 7) is GRANTED.

Defendant's Motion to Stay Discovery Pending Resolution of Motion to Dismiss (Dkt. 9) is

DENIED AS MOOT.

The case is now closed.

IT IS SO ORDERED.

DATED this 7th day of October, 2015.

Robert F. Bryan

ROBERT J. BRYAN
United States District Judge